

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-241-C - ORDER NO. 2005-3
JANUARY 6, 2005

IN RE:	Application of Cognigen Networks, Inc. for a)	ORDER
	Certificate of Public Convenience and)	GRANTING
	Necessity to Operate as a Reseller of)	CERTIFICATE FOR
	Interexchange Telecommunications Services)	INTEREXCHANGE
	within the State of South Carolina and for)	AUTHORITY AND
	Alternative Regulation.)	ALTERNATIVE
)	REGULATION

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Cognigen Networks, Inc. (“Cognigen” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of interexchange telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2003) and the general regulatory authority of the Commission. By its Application, Cognigen also requests alternative regulation of its business services offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C, as modified by Order No. 2001-997 in Docket No. 2000-407-C, and requests waiver of certain Commission regulations.

The Commission’s Executive Director instructed Cognigen to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of

the Application of Cognigen and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Cognigen complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene or Protests were filed.

A hearing was convened on December 2, 2004, at 2:30 p.m. in the Commission's Hearing Room, Columbia, South Carolina. The Honorable Randy Mitchell, Chairman, presided. Cognigen was represented by Bonnie D. Shealy, Esquire. F. David Butler, Esquire, represented the Commission Staff.

Thomas S. Smith, CEO/President of the Company, appeared and testified in support of the Application. The record reveals that Cognigen is incorporated in Colorado, and registered to transact business in South Carolina as a foreign corporation. According to Mr. Smith, Cognigen proposes to operate as a reseller of intrastate interexchange telecommunications services to the public on a statewide basis and to offer a wide range of "1+" direct dialed interexchange telecommunications services on a resale basis.

Specifically, Cognigen seeks authority to provide interLATA, intraLATA, direct dialed services including (1+) service, specifically MTS, out-WATS, in-WATS, and calling card services. Mr. Smith explained the Company's request for authority, and the record further reveals the Company's services, operations, and marketing procedures.

Mr. Smith also discussed Cognigen's technical, financial, and managerial resources to provide the services for which it seeks authority to provide. Mr. Smith offered that Cognigen possesses sufficient financial resources to support its operations in South Carolina, as well as the requisite management and technical capabilities. The

Company has not been denied a license in any of the states in which it has applied, has had no licenses revoked in any jurisdictions, nor has it been the subject of any investigations by any governmental regulatory agencies. The Company's Application and Mr. Smith's testimony both evidence that Cognigen's management team has extensive experience in both marketing and communications. Mr. Smith also testified that Cognigen will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders.

Mr. Smith offered that approval of Cognigen's Application would serve the public interest by increasing the level of long distance competition in South Carolina, by providing a high-quality alternative of long distance service, and by increasing consumer awareness of options and services available, thus encouraging the growth and success of competitive services.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Cognigen is organized as a corporation under the laws of the State of Colorado and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. Cognigen is currently licensed to operate as a telecommunications reseller in 36 States and the District of Columbia, and wishes to begin offering its services in the

State of South Carolina. Cognigen has no reported record of violations of regulatory laws or regulations in the jurisdictions in which it is currently operating.

3. Cognigen desires to operate as a reseller of interexchange telecommunications services in South Carolina.

4. We find that Cognigen possesses the managerial experience and capability to operate as a non-facilities based reseller of interexchange services in South Carolina.

5. We further find, based on the financial records and balance sheets submitted by the Company, that Cognigen possesses sufficient financial resources to provide the services as described in its Application.

6. We finally find that the issuance of a Certificate of Public Convenience and Necessity to Cognigen to operate as a reseller of interexchange telecommunications services in South Carolina would be in the best interest of the citizens of South Carolina by increasing the level of long distance competition in South Carolina, by providing an alternative of long distance service, and by increasing consumer awareness of options and services available, thereby encouraging growth and success of competitive services.

CONCLUSIONS OF LAW

1. The Commission concludes that Cognigen possesses the managerial, technical, and financial resources to provide the interexchange telecommunications services as described in its application.

2. The Commission concludes that Cognigen will participate in the support of universally available telephone service at affordable rates to the extent that Cognigen may be required to do so by the Commission.

3. The Commission concludes that Cognigen will provide services which will meet the service standards of the Commission.

4. The Commission concludes that approval of Cognigen's Application to provide intrastate interexchange telecommunications services within South Carolina will serve the public interest by enhancing competition in the State of South Carolina by offering additional service offerings to South Carolina's consumers and by providing for efficient use of existing telecommunications resources.

5. The Commission concludes that the provision of interexchange telecommunications service by Cognigen will not adversely impact the public interest.

6. The Commission concludes that the issuance of the authority to provide intrastate interexchange telecommunications services as requested by Cognigen and as set forth in its Application, is in the best interests of the citizens of the State of South Carolina.

7. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to Cognigen to provide intrastate interexchange service via resale.

8. The Commission concludes that Cognigen's intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Commission has previously granted this "alternative regulation" to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the

competitive marketplace requires the Commission to allow this flexible regulation to those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute a proceeding of any tariff filing. If the Commission institutes a proceeding of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity should be granted to Cognigen to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service

(MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for Cognigen for its resale of residential services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. Cognigen shall not adjust its residential rates below the approved maximum level without notice to the Commission, ORS and to the public. Cognigen shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2004).

4. With respect to Cognigen's business services, consumer card, and operator service offerings, the Commission adopts a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute a proceeding of any tariff filing. If the Commission institutes a proceeding of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Cognigen also. These alternative regulation orders were modified by Order No. 2001-997 in Docket No. 2000-407-C which imposed a cap on operator-assisted calls where a consumer uses a local exchange carrier's calling card to complete calls from locations which have not selected the local exchange carrier as their toll provider.

Pursuant to Order No. 2001-997, this Commission modified the alternative regulation by the re-imposition of rate caps with regard to certain operator assisted calls where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a minimum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. The re-imposition of rate caps for certain operator assisted calls has led to alternative regulation now being known as "modified alternative

regulation.” The provisions of Order No. 2001-997 and the modification contained therein also apply to Cognigen.

5. If it has not already done so by the date of issuance of this Order, Cognigen shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order with this Commission and the Office of Regulatory Staff (ORS). The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission’s Rules and Regulations.

6. Cognigen is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

7. With regard to the Company’s resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. Cognigen shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Cognigen changes underlying carriers, it shall notify the Commission and ORS in writing.

9. With regard to the origination and termination of toll calls within the same LATA, Cognigen shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, Cognigen shall

comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

10. Cognigen shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission with the Commission and ORS. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Cognigen shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.state.sc.us/reference/forms.asp. The title of this form is "Annual Report for Interexchange Companies." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1st**. Commission gross receipts forms are due to be filed with the Commission and ORS no later than **October 1st** of each year. The proper form for filing gross receipts information can be found at the Commission's website at www.psc.state.sc.us/reference/forms.asp, and the appropriate form is entitled "Gross Receipts for Utility Companies."

11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with

general management duties as well as emergencies which occur during non-office hours. Cognigen shall file the names, addresses and telephone numbers of these representatives with the Commission and ORS within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at www.psc.state.sc.us/reference/forms.asp; this form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced.

12. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

13. At the hearing, Cognigen requested a waiver of 26 Code Regs. 103-610 (Supp. 2003), which requires that records required by the Commission’s Rules and Regulations be maintained in South Carolina. The record reveals that Cognigen’s principal headquarters will be located in the State of Washington. Cognigen requests permission to maintain its books and records at its headquarters. The Commission finds Cognigen’s requested waiver reasonable and understands the difficulty presented to Cognigen should the waiver not be granted. The Commission therefore grants the requested waiver that Cognigen be allowed to maintain its books and records at its principal headquarters. However, Cognigen shall make available its books and records at all reasonable times upon request by the Commission or the Commission Staff, and Cognigen shall promptly notify the Commission if the location of its books and records changes.

14. Cognigen also requests that it be exempt from record keeping policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (USOA). The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, Cognigen maintains its book of accounts in accordance with Generally Accepted Accounting Principles (GAAP). GAAP is used extensively by interexchange carriers. Moreover, Cognigen asserts that because it utilizes GAAP, the Commission will have a reliable means by which to evaluate Cognigen's operations and assess its financial fitness. Accordingly, Cognigen hereby requests an exemption from the USOA requirements. We grant the Company's request for the reasons stated above.

15. Each telecommunications company certified in South Carolina is required to file annually the Intrastate Universal Service Fund (USF) worksheet. This worksheet provides the Staff information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed with the ORS annually no later than August 15th.

16. This Order shall remain in full force and effect until further notice by this Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
O'Neal Hamilton, Vice-Chairman

(SEAL)